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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,278	09/25/2003	Larry B. Gray	1062/D45	6585

2101 7590 05/12/2005

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EXAMINER
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HOGAN, JAMES SEAN

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/671,278	<b>Applicant(s)</b> GRAY ET AL.	
	<b>Examiner</b> James S Hogan	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/14/05</u> , <u>2/2/04</u> , <u>2/7/05</u> , <u>4/1/05</u>               | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because, as per MPEP § 1.84, Standards for Drawings, whereas an elevation view is permitted (in reference to figure 7), the drawing must contain as many views as necessary to show the invention. In the case of Figure 7, the drawing of which the content of the claims is mostly based on, a hatched cross section as per MPEP § 1.84 (1) (h) (3) is required. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,325,062 to Sosiak, in view of U.S. Patent 6,196,219 to Hess et al.

Regarding claim 1, Sosiak ('293) teaches an ultrasonic nebulizer where a valve (generally embodied at 105) is configured to be in communication with a liquid volume (103), an atomizer (nozzle (135) and receives a control from a processor (in canister

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103, described col. 9, line 2 to 8). Sosiak et al. ('062) does not teach a plurality of individually selected volumes, each including an air chamber and a fluid chamber. Hess et al. ('219) teaches a pre-metered dose housing (28) for delivering individually selected volumes of inhalant (4). Each dosage is contained in a fluid chamber space (9). As per claim 2, the volume in the device of Hess et al. ('219) includes acoustic ports (10a), in the embodiment shown in Figure 4. As per claims 3 and 4, the valve of Sosiak ('293) is in communication with the volume of dosable liquids (in canister 103) and an air source (opening 128). As per claim 7, the device of Hess et al., (219) includes means for indexing a selected fixed volume in magazine (28). It would have been obvious to one skilled in the art at the time the invention was made to have modified the ultrasonic nebulizer of Sosiak ('062) with the individually selected dosage volumes of Hess et al. ('219) in order to provide a dosing device with precise dosage means.

### ***Allowable Subject Matter***

3. Claims 5 and 6 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 8 allowed.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

U.S. Patent No. 6,425,392 to Sosiak disclosing an inhaler

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U.S. Patent No. 6,119,684 to Noël, disclosing an inhaler

U.S. Patent No. 6,655,381 to Keane et al., disclosing an inhaler

U.S. Patent No. 3,561,444 to Boucher, disclosing an inhaler

U.S. Patent No. 5,921,232 to Yokoi et al., disclosing an inhaler


U.S. Patent No. 6,748,945 to Grychowski et al., disclosing an inhaler

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH  
04/28/2005



**David A. Scherbel**  
**Supervisory Patent Examiner**  
**Group 3700**